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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,301	01/23/2002	Phillip Clark	MCA-531 US	9766

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EXAMINER

DRODGE, JOSEPH W

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 08/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,301

Applicant(s)

CLARK, PHILLIP

Examiner

Joseph W. Drodge

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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NON-FINAL REJECTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 4-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Sklar et al patent 5,308,483.

Sklar et al disclose a sampling and filtering assembly comprising a receptacle with a fillable internal area (upper body 10), capable of use in plural positions or orientations, such as inverted positions (column 4, lines 3-29), impermeable solid area 34, having drain 42 and variably sealing and unsealing member 43 or 50 (see generally column 3, lines 12-45).

Regarding claims 2 , 4-8 and 10, see single drain opening 41, and membrane 37.

Specifically regarding claim 5, the variably sealing member may be a plug (column 3, line 41).

Regarding claims 6-8, see thermoplastic seal covering 50 of gasket or resilient construction, (column 3, lines 12-16 and 42-45 and column 4, lines 35-36).

Regarding claim 9, the uses described in column 3, lines 46-49 and column 4, lines 1-29 define the apparatus as a kit.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Olsen patent 5,227,062.

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Olsen discloses receptacle 14 or 19, partially enclosed by solid material 34 having a drain portion with plural drain openings 38 or 35/42 and a device to partially or completely unseal the openings 25/28/48. Regarding claim 2, the claim is reciting membrane *material*, most materials being capable of use as a membrane; if necessary, Olsen discloses upstream membrane (column 4, lines 13-17). Regarding claim 3, the claim is merely reciting *openings*, per se, not structure for individually sealing or unsealing the openings.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sklar et al in view of Zuk patent 5,948,483.

Claim 3 differs from Sklar et al in requiring the drain to have plural openings. Sklar et al and Zuk commonly disclose assemblies comprising membrane filters for samples, filtrate reservoirs, funnels, and reusable bases. Zuk teaches plural openings 52 or 58 at

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membrane support above the reservoir (column 3, lines 43-54). It would have been obvious to one of ordinary skill in the art to have modified the Sklar et al arrangement by providing plural, rather than a single, drain opening, as taught by Zuk, so as to collect larger quantities of filtrate, at a higher, more accurate flow rate.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zuk patent 6,344,140 is representative of the prior art concerning construction of contemporary swinging bucket filters.

Any inquiry concerning this communication should be directed to the examiner, Joseph W. Drodge, whose telephone number is (703) 308-0403. The examiner can normally be reached on Monday-Friday from approximately 8:30 AM – 4:45 PM. The fax phone number for this Group is (703) 892-9306. When filing a FAX in Tech Center 1700, please indicate in the Header "Official" for papers that are to be entered into the file and otherwise indicate "Unofficial".

JWD

August 13 2003


JOSEPH DRODGE
PRIMARY EXAMINER